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EXAMINER

AYRES, TIMOTHY MICHAEL

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/584,163
Filing Date: March 09, 2007
Appellant(s): GOMOLL ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/03/11 appealing from the Office action mailed 10/26/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 14-16, 21-28 and 31-45 are rejected

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,079,216	de Marsillac Plunkett	6-2000
4,790,146	Mun	12-1988
5,358,326	Cherry	10-1994
2,728,203	King	3-1954

Osborn, Roe "Finding the Right Refrigerator" Fine Homebuilding Magazine, Fall/winter 2000, pp 98-103

Guertin, Mike "Faux Fridge Front" Fine Home Building Magazine fall/winter 1999, pp. 52-53

Alexander, Rex "Hide That Ugly Refrigerator" Fine Home Building Magazine april/may 1997, pp. 72-73

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

This rejection is relevant to argument section B.

Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no discussion in the disclosure of the decorative panel being *removable* nor is there any structure specifically shown or disclosed that would allow the decorative panel *to be removed*.

Claim Rejections - 35 USC § 102

This rejection is relevant to argument section C.

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by applicant admitted prior art figure 1. As seen in figure 1 of this application a body (6) and door (7) of a refrigerator are installed in a niche (1). As seen in the figure when the door (7) is open it projects beyond a front edge (3) of the niche.

This rejection is relevant to argument section D

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Finding the right refrigerator by Roe Osborn from fine homebuilding magazine. Osborn teaches

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different embodiments of refrigerators in stalled in a niche. As seen in the refrigerator on page 99, the body of the refrigerator is flush with the niche and the door projects beyond the edge. As also seen in the picture on page 99, the door of the refrigerator has a receiving area that extends inside the body of the refrigerator and into a cavity on the door. Regarding claims 15, Osborn teaches a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche such as seen on page 100 and 101.

This rejection is relevant to argument section E

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Hide That Ugly Refrigerator by Rex Alexander from fine homebuilding magazine. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche.

This rejection is relevant to argument section F

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,079,216 to de Marsillac Plunkett. De Marsillac teaches a refrigerator unit installed in a niche as seen in figure 1, 2, and 4. The refrigerator comprises a body (1) and thermally insulated door (4,5). The niche (21) is the recess in the wall (20), it should also be noted that the niche is not considered to be positively claimed and is considered just a

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reference point to define structure of the refrigerator. Regarding claim 15, Also with no structure of niche there is no reference point to define a front of the niche or refrigerator.

This rejection is relevant to argument section G

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,790,146 to Mun. Mun teaches a refrigerator capable of being installed in a niche. The refrigerator comprises a body and thermally insulated door. While no niche is specified in most kitchens the refrigerator is designed to fit in a niche, even if there is room between the body and the niche, but this is irrelevant since the claims do not positively require the niche and the refrigerator of Mun is very capable of being positioned in the positions required by the claim without any modification to the refrigerator.

This rejection is relevant to argument section H

Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,358,326 to Cherry. Cherry teaches a refrigerator in stalled in a niche. The refrigerator comprises a body and thermally insulated door. The examiner is interpreting the front of the refrigerator to mean the front of the body (Col. 1, lines 15-20) since it known in the art (as reinforced by page 101 in the finding the right refrigerator article) that the doors and handles of counter depth refrigerator stick out beyond the cabinet front since the body of a counter depth refrigerator is designed to be 24 in and cabinets are also designed to be 24 inches with minor variations in design and manufacturing. Regarding

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claims 15 and 16, Cherry to teach a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche.

This rejection is relevant to argument section I

Claims 14, 23, 26-28, and 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2,728,203 to King. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that is considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14).

Claim Rejections - 35 USC § 103

This rejection is relevant to argument section J

Claims 15, 16, 21, 22, 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,728,203 to King in view of "Hide That Ugly Refrigerator" by Rex Alexander from fine homebuilding magazine. King discloses every element as claimed and discussed above except the refrigerator installed in a niche and the relationship of the refrigerator to niche. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently

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would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of King by putting it in a niche as taught by Alexander to help give the kitchen a built in look while not using a built-in refrigerator.

This rejection is relevant to argument section K

Claims 14-16, 21-28, and 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Faux Fridge Front” by Mike Guertin from fine homebuilding magazine in view of US Patent 2,728,203 to King. Guertin teaches a refrigerator installed in a furniture niche as seen in figure on page 53. The refrigerator body is behind the front edge of the niche and the decorative panel of the door projects beyond the front edge when the door is closed as seen in the left figure on page 52. Guertin does not expressly disclose a receiving area in the door that does not project into an interior of body of the refrigerator. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that are considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14). At the time of the invention it would have been obvious to use the refrigerator of King (simple

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substitution) as the base refrigerator and then add the decorative panel onto that in the location as taught by Guertin.

(10) Response to Argument

A. General Note –intended Use

The appellant argues on page 6 of the brief that "the office action appears to be taking the position that the limitation in the claim regarding the furniture niche are merely intended use and are therefore not given patentable weight". The examiner disagrees with this statement since as seen by the rejections applied for claim 37 (and the dependent claims) the claims are considered to positively recite the furniture niche. Now while the examiner does not consider claims 14 and 27 (and the dependent claims) to positively recite the furniture niche by merely to recite the intended use of the refrigerator in the furniture niche and is given patentably weight as intended use (i.e. that the refrigerator is capable of being used with a furniture niche such that the door can project beyond a front edge of the niche).

B. The 112, first paragraph rejection of Claims 24 and 25

On page 7 of the brief the appellant argues that it is known from the totality of the disclosure that the decorative panel can be removable from the door. The examiner disagrees since there is no specific recitation of the decorative panel being removable in addition to any structure that would allow for such process of removing the decorative panel from the door. In addition in the art there are examples of decorative panels that

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are not removable from the door which is common when the decorative panel is stainless steel (which is an example of possible material for the decorative panel given by the applicant on page 3 of the specification). Appellants have provided no support in the drawings or the written specification to support the claim language they now claim. Whether a person of ordinary skill would have known how to make the panel removal is not the issue. The issue is whether appellants disclosed structure or the ability of the decorative panel to be removable on filing. They did not. Therefore, claims 24 and 25 fail to comply with the written description requirement of 35 USC 112. 1st and the rejection should be sustained.

C. Claim 14 is not anticipated by Figure 1 of this application

On page 7 of the brief the appellant argues that the phrase "projecting beyond a front edge of the furniture niche" is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. The examiner disagrees that the phrase "projecting beyond a front edge of the furniture niche" denotes that the door is closed and that the furniture niche has cupboard elements since there is no special definition defined in the specification and the claims are only to be viewed in light of the specification. Therefore the examiner does not consider the feature of the door being closed and the furniture niche having

cupboard elements to not be a claimed feature of claim 14, (they are claimed in latter claims).

On page 7 of the brief the appellant argues that "Figure 1 does not show cupboard elements adjacent to the furniture niche of the refrigeration unit." The examiner disagrees since as stated above the examiner does not consider "cupboard elements" to be a claimed feature of claim 14.

D. Claim 14 is not anticipated by "Finding the Right Refrigerator" by Osborn

On page 8 of the brief the appellant argues that the phrase "projecting beyond a front edge of the furniture niche" is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

On page 8 of the brief the appellant argues that "Osborn does not show cupboard elements adjacent to the furniture niche of the refrigeration unit." The examiner disagrees since as stated above the examiner does not consider "cupboard elements" to be a claimed feature of claim 14.

E. Claim 14 is not anticipated by "Hide that Ugly Refrigerator" by Alexander

On page 8 of the brief the appellant argues that the phrase "projecting beyond a front edge of the furniture niche" is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the

decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

On page 8 of the brief the appellant argues that “Alexander does not show cupboard elements adjacent to the furniture niche of the refrigeration unit.” The examiner disagrees since as stated above the examiner does not consider “cupboard elements” to be a claimed feature of claim 14.

F. Claim 14 is not anticipated by Marsillac Plunkett

On page 9 of the brief the appellant argues that the phrase “projecting beyond a front edge of the furniture niche” is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

On page 9 of the brief the appellant argues that “Marsillac Plunkett does not show cupboard elements adjacent to the furniture niche of the refrigeration unit.” The examiner disagrees since as stated above the examiner does not consider “cupboard elements” to be a claimed feature of claim 14.

G. Claim 14 is not anticipated by Mun

On page 9 of the brief the appellant argues that the phrase “projecting beyond a front edge of the furniture niche” is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the

decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

On page 10 of the brief the appellant argues that “Mun does not show cupboard elements adjacent to the furniture niche of the refrigeration unit.” The examiner disagrees since as stated above the examiner does not consider “cupboard elements” to be a claimed feature of claim 14.

H. Claim 14 is not anticipated by Cherry

On page 10 of the brief the appellant argues that the phrase “projecting beyond a front edge of the furniture niche” is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

On page 10 of the brief the appellant argues that “Cherry specifically states...that the front of the refrigerator is essentially even with the front of the adjacent kitchen counter and cabinets”. The examiner agrees with this statement, but claim 14 does not claim that the door is in the closed position when projecting beyond the front edge of the furniture niche and the examiner considers that when the door of Cherry is open it would meet the limitations of claim 14. Claim 27 claims when the door is closed and that is why Cherry is not applied to claim 27.

I. Claim 14, 23, 26-28, and 31-36 are not anticipated by King

On page 11 of the brief the appellant argues that the phrase "projecting beyond a front edge of the furniture niche" is defined by the specification in paragraph 007 that when the door is in the closed position that the door projects far enough that the decorative panel projects further than the doors of the cupboard elements adjacent to the furniture niche. Please section C above for the examiner interpretation of this.

The examiner admits that King does not show a furniture niche. As stated above in section A, the examiner considers claims 14 and 27 to not require a furniture niche, but just a refrigerator capable of being installed into a furniture niche. The examiner considers the refrigerator of King to not have any structure that would prevent it from being installed in a furniture niche and one of ordinary skill in the art would expect predictable results when installed in a furniture niche. It should also be noted that term "installed" does not imply any structure or special relationship, but just means that the refrigerator is positioned.

On page 12 of the brief the appellant argues that "King does not show a pivot axis of the door". The examiner agrees that King does show a pivot axis, but King does describe the door being opened and a protruding edge of the door contacting the gasket (11). The examiner considers it inherent for the door to open that the axis must be beyond the protruding edge of the door. Any other position would force a tail end of the door to contact the body of the refrigerator and prevent the door from opening. In addition it is the common known method of configuring the hinge of refrigerator as shown by the numerous cited references and even applicant's own admitted art in figure 1 of this application.

J. Claim 15, 16, 21, 22, and 37-45 are not unpatentable over King in view of Alexander

On page 12 of the brief the appellant argues that there would be no motivation to add a door having the claimed receiving area to the refrigerator of Alexander. It should be noted that the rejection is King in view of Alexander and there is no modification to actually structure of the refrigerator. The refrigerator of King is just used in the kitchen shown in Alexander and positioned into the furniture niche in the manner shown by Alexander.

On page 13 of the brief the appellant argues that both photographs of Alexander show the doors flush with the front edge of the cabinet. The examiner will concede that the photograph on page 73 may have the front surface of the door flush and it is too close to ascertain from the angle the picture was taken at. Although the examiner does consider the handles to be part of the door and those clearly do project forward of the furniture niche and is even described in the description. The examiner considers the photograph on page 72 to show enough detail to ascertain that the front surface of the door does slightly project forward of the furniture niche. In the photo the right side of the furniture niche is obscured by the refrigerator door and along with amount of the side of the refrigerator door being shown on the side closer to the camera the examiner considers the geometry (extrapolated from the photo) to require the refrigerator door to protrude slightly forward of the niche in order for those to be true. In addition the examiner considers it known and common sense that houses and cabinetry contract

and expand with seasons therefore even if a refrigerator is positioned perfectly flush one day it is not possible for it to remain there since there is no structure connecting the niche and the refrigerator and the refrigerator would someday be in a position with the door projecting beyond a front edge of the furniture niche.

On Page 14 of the brief the appellant argues that Alexander does not suggest the front edge of the body of the refrigerator being flush with the furniture niche. The examiner disagrees that Alexander only teaches the door face being flush with the front edge of the niche as stated above that the two figures teach different configurations. In addition the examiner considers it an aesthetic preference that one person would desire the door flush while another person would desire the body flush or some other configuration. There being no structure to prevent adjustment of the refrigerator and the examiner considers one of ordinary skill in the art would adjust the refrigerator to their desired aesthetic view and this would arrive with the body flush. In addition the examiner considered the refrigerator body to be close enough to the front of the furniture niche it would inherently arrive at being flush based on the natural movements and adjustments of the refrigerator with the expansion and contraction of the house and niche.

K. Claims 14-16, 21-28 and 31-45 are not unpatentable over “Faux Fridge Front”
by Guertin in view of King

On page 15 of the brief the appellant argues that due to the non-flat shape of the door of King it would not have been obvious to add a decorative panel as shown by

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Guertin. The examiner disagrees that the rounded top and bottom of the door of King would have any effect on the application of the decorative panel attachment. As seen in the figure on page 53 Guertin shows that the first bend of the channel is what holds the decorative panel on the door and the door of King would have similar door structure at the point of the first bend therefore the channel would still be held on the door of King.

On page 16 of the brief the appellant argues that since Guertin sees the refrigerator sticking out into the room as a drawback, it would not have been obvious to make the refrigerator stick out even further into the room by adding the decorative panel. Just because something is a drawback does not make it obvious it is just a factor that one of ordinary skill in the art would weigh when figuring out the aesthetic advantage of adding the decorative panel. In addition the added thickness to the door is only about $\frac{3}{4}$ of an inch (usual thickness of the decorative panel) and is the same whether the system is applied to the door of a refrigerator shown in King or Guertin.

On page 17 of the brief the appellant argues that Guertin does not shown a front edge of the body of the refrigerator being behind a front edge of the niche. The examiner disagrees as seen in the left figure on page 52 the bottom door of the refrigerator only shown black on the side while the body of the refrigerator is white (interpreted from the other figures). In order for this to happen the body has to be behind a front edge of the furniture niche. Based on the figures the examiner considers that the front of the body is close to be being flush with the front edge of the furniture niche that through the natural movements and adjustments of the refrigerator with the expansion and contraction of the house and niche that it would inherently at a point

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become flush. The examiner considers the same logic to apply to decorative end portions (black channels) would inherently be flush with the front of the furniture niche.

On page 18 of the brief that appellant argues that neither King nor Guertin teach a plurality of doors of different depth. This is clearly taught by Guertin which has a door without a decorative panel and a door with a decorative panel that have different depths. In addition there are varying depths of the decorative panels that give the doors a variety of different depths.

On page 18 of the brief the appellant argues that neither King nor Guertin teaches a location of the axis. See section I above in regards to the examiner position on the axis of King. While irrelevant since the examiner considers King to show this feature Guertin also shows the opening of the door in the figure of page 53 which therefore does define a pivot axis. It is inherent based on this pivot axis and the thickness of the door that in order for the door to operate as shown the protruding part of the door would be between the pivot axis and the body of the refrigerator.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Timothy M Ayres/

Examiner, Art Unit 3637

/Darnell M Jayne/

Supervisory Patent Examiner, Art Unit 3637

Conferees:

Darnell Jayne /dj/

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